which is of crucial importance to the defense of the eleven, the defense of the democratic rights of our

—Tr. Tr. 8284—

Party. I would assume—

The Court: Why, this statement came out when the deposition had been ordered of Foster on written interrogatories and cross-interrogatories, and so on. How can it be that a man can issue an ex parte statement as defense and then have that put in evidence in lieu of testimony?

Defendant Dennis: Well, on that point, your Honor, I think it is clear that the statements of Mr. Foster in a deposition are not mutually exclusive, and at best the deposition would and could only supplement this rounded-out statement, which is not the personal views of Mr. Foster alone but which is now an official party document. It has already been published in over a quarter of a million copies, and it is being used everywhere both by the National Committee and all organizations of our Party as a guide to action for the present situation and for the coming years.

The Court: But the defense is to be given from the witness stand by testimony, not by preparing a paper and circulating it and then producing the paper in court and saying "This is our defense." You can't cross-examine a paper.

Defendant Dennis: It would seem to me on that question, in its more technical aspects, the fact that,

—Tr. Tr. 8285—

let us say, one of the defendants or several or all testify; that by no stretch of the imagination pre-

cludes the submission of additional evidence by a defendant, or any other defense witness, particularly when it is more than an article or a speech, when it is the most comprehensive and most authoritative exposition, both of the theory and the strategy and the tactics of our party, and I would say apropos of this that certainly this statement, which is the most fundamental presentation of our position in all aspects, is a thousand times more relevant than other articles or documents, not only those which have been offered in evidence and which have been offered by Mr. Foster—surely, they are far more relevant in this case than the issues at stake, and let us show the excerpts from the writings of Mr. Foster, written in 1928 and 1932 which the prosecution has offered, and which Mr. Foster as well as our Party have changed their point of view, and in fact with respect to certain of those have repudiated the points of view that were expressed.

The Court: Didn't Mr. Gates testify to that effect?

Defendant Dennis: That was with respect to a certain part.

The Court: Yes.

Defendant Dennis: I would like to emphasize

—Tr. Tr. 8286—

to the Court that Mr. Foster's statement herein presented deals in a rounded-out way with basic questions concerning both our immediate program as well as our ultimate program. This statement—

The Court: We have to try this case, Mr. Dennis, according to the rules of law, and I know of no

precedent whatever for permitting any such thing as this to be done.

Defendant Dennis: But it seems to me amongst the questions raised in the case that deal with the position of our Party on such matters as referred to in the indictment, the questions of whether our Party advocates peaceful or violent means of obtaining its fundamental objectives, et cetera, therefore it seems to me it is germane, it is absolutely relevant that we should be allowed to present the official position of our Party; and in regards to the question that may be raised as to when the document was finally published and finally circulated, I would call to the attention of the Court that the important thing is not when a statement or document or a book may have been written; the decisive thing is, does it represent authoritatively the real, the actual position of our organization, and I submit—

The Court: Well, I think one difficulty, Mr. Dennis, that has pervaded this entire case is that you and your co-defendants and your lawyers have seemed

—Tr. Tr. 8287—

to have a queer notion that when they say something is so that makes it so, and I don't know where you ever get that idea, but it just—there is no basis for it. The jury will do the deciding, passing on credibility of witnesses and drawing inferences from facts. And just because you say something is so simply does not make it so, and you have to reconcile yourself to that.

Defendant Dennis: Well, your Honor, the statement I make regarding Mr. Foster's statement is authentic, is accurate. Mr. Foster's statement embodies most profoundly and in a most comprehensive and rounded-out way the position of our Party. It deals with matters of strategy and theory and tactics, and among its unique contributions is that it analyzes the changes and positions in the Party's policies over the years, and particularly since 1935; and I would remind the Court that in the cross-examination of Mr. Gates the Government introduced a review which appeared in the Daily Worker after the indictment, a book review of Mr. Vishinsky's book, and the Government offered both the review and Mr. Vishinsky's book in evidence, and here—

The Court: Did I receive Mr. Vishinsky's book? What is the exhibit number?

Mr. McGohey: You didn't, your Honor; I can answer that.

—Tr. Tr. 8288—

Defendant Dennis: But the Court ruled on quite different grounds.

The Court: Well, you mean they tried to get it in but I wouldn't receive it. Well, that doesn't make much of an argument then.

Mr. McGohey: If the Court please, the Vishinsky book was not offered. It was marked in evidence and the witness Gates was examined concerning it.

Mr. Gordon: Marked for identification.

Mr. McGohey: Marked for identification, but it wasn't even offered.

The Court: Yes, that is my recollection. I have no recollection of receiving that book, but however that may be, Mr. Dennis, I really am not open to argument on this. It is a most unprecedented thing. It is contrary to any rule of law that guides us in these cases, and it would make it possible for a defendant, instead of taking the stand and subjecting himself to cross-examination, to get up a big book explaining everything the best he could, putting it all down and putting the book in—and you can't do that.

Defendant Dennis: But the important thing here, your Honor, as I said, is not when this particular statement or another book or document may have been written; the question is, does it accurately rep-

—Tr. Tr. 8288-A—

resent the position of our Party on this, that or some other question; and this particular statement is the most rounded-out and programmatic exposition of our stand.

—Tr. Tr. 8289—

The Court: And it has been most carefully prepared after the indictment, everything was worked out, that was all done after the indictment, and naturally you would expect people who were sitting down and preparing a document to explain everything as best they could, and if you could do that instead of taking the witness stand and being cross-examined, why, we would have to revise our whole system of the administration of justice.

Defendant Dennis: Your Honor, that was prepared with great care and thoroughness and deep

insight and with all the profound contributions of which Mr. Foster as our National Chairman is capable. In connection with other documents which we present they were also prepared carefully and thoroughly, even some of the ones that have been excluded so far. The care and thoroughness of the preparation cannot militate against the introduction of this evidence which I repeat is indispensable for the defense of us 11 defendants.

The Court: Don't you think we ought to get the jury back? You don't need to argue, do you, Mr. Gladstein?

Mr. Gladstein: I would like to support the argument briefly by answering a couple of questions the Court has posed.

The Court: I find every time that we get into

—Tr. Tr. 8290—

one of these things an hour or two goes by. I suppose it is my tolerance of this sort of thing that encourages it. The paper that is being offered is clearly the most inadmissible piece of evidence I have ever seen.

Mr. Gladstein: Can I address myself to that one point?

The Court: If you can do it briefly, but I suppose the minute you get through Mr. Isserman will have to speak and Mr. Crockett.

Mr. Crockett and Mr. Isserman, are you willing to let Mr. Gladstein finish the argument on this?

Mr. Crockett: If your Honor desires to hear me I would be very glad to speak.

The Court: All right, tell the jury to go to lunch.

Mr. Isserman: I was going to tell the Court I was not going to speak.

The Court: That is all right, tell the jury to come back after lunch.

Go ahead.

Mr. Gladstein: Now your Honor has said that if this exhibit were received it would be unprecedented. Now first of all I think that that wouldn't be an obstacle because a number of unprecedented things have already occurred commencing with the returning of the indictment.

—Tr. Tr. 8291—

The Court: Ha ha, you know I expected you were going to do that.

Mr. Gladstein: I can't overlook the opportunity nor the necessity to reply to your Honor.

The Court: All right.

Mr. Gladstein: This is an unprecedented case. It presents unprecedented issues. It has been handled in an unprecedented way.

The Court: I'll say it has.

Mr. Gladstein: And early today we had occasion to complain of at least one aspect of the case in which the Government joined in conceding that that aspect was handled in an unprecedented way. But be that as it may, I do not think that this is unprecedented by any means: what we are asking the Court to do, and I submit that we are actually asking the Court to apply a very well recognized rule of law, is this: there are two questions that might be raised concerning this document. One is is the ma-

terial contained in the document material to the issues in the case?

To that there can be no question as to what the answer is going to be because the document contains the official advocacy of the defendants and of the Communist Party referring to the very issues involved in this case, such as issues, for example, as

—Tr. Tr. 8292—

to whether or not the defendants have advocated the forceful overthrow of the Government.

The Court: You wouldn't expect them to issue a booklet in which they said, "We are guilty"?

Mr. Gladstein: I am coming to that. I first want to point out that the subjects treated in the document are definitely material, they deal with force and violence, they deal with such subjects as the dictatorship of the proletariat, they deal with the Communist analysis of the capitalist system of society, they deal with depression, with fascism and with war.

These are the subjects the Government has put witnesses on who in substance according to their claim say that the Communists advocate force and violence against the Government and that this force and violence would be used either in a depression or crisis or in a time of war.

Therefore on the first aspect, on materiality, I think there can be no question that the document is material.

Now, secondly, does it give fair opportunity to cross-examine? Does it overcome the question that your Honor asks, What would we expect them to do? Plead guilty?

The Court: If they were going to plead guilty

—Tr. Tr. 8293—

they would plead guilty. They wouldn't need to issue a book saying that.

Mr. Gladstein: Yes, and this is my answer: The document offered does not purport to represent solely and exclusively what the leaders of the Communist Party today say they advocate. The foundation has been laid by the testimony of this witness to establish as a fact that this document is an historical document, it is a document which brings together in one place and synthesizes, compiles and summarizes the teachings, the advocacies, the doctrines, and the activities of the defendants during the period covered by the indictment, 1945 to 1948, as well as a period prior to 1945 which I take it would not be ruled out since we have had Government witnesses go into background even beyond 1935 and into 1930.

So it is an historical document which has every bit as much place, and indeed far more place than the History of the Communist Party of the Soviet Union or the Communist Manifesto.

The Court: You don't call this legal argument, do you?

Mr. Gladstein: I do, your Honor.

The Court: I sounds to me like arguing to some people who did not know any law.

—Tr. Tr. 8294—

Mr. Gladstein: Of course lawyers have that experience themselves. They try to set forth good, sound legal propositions.

Let me say therefore this document, which is supported by and documented by the actual historic activities and advocacies of the defendants—

The Court: That is what you say.

Mr. Gladstein: But we have a right at least to present and let the jury pass upon whether it is or not.

The Court: The jury is not going to pass on some book that you say is the truth. That settles it. The truth will come from the witness stand and they will pass on the testimony of the various witnesses—

Mr. Gladstein: That brings me to my next point. This witness testified that he participated in the preparation of the exhibit which is now being offered and he is prepared to testify to the accuracy of what is reflected by that document of his views, opinions, teachings and advocacy subject to cross-examination. If this document were admitted in evidence it would then enable Mr. McGohey to cross-examine Mr. Green on every—

The Court: Let me ask you this: Suppose you had a contract case and the plaintiff takes the stand —Tr. Tr. 8295— his counsel asks him, You have studied all the aspects of this question? He answers, Oh yes.

Did you write them all down?

I have. I have been studying this for a couple of months and I have got down in this little book every detail carefully worked out and that is just absolutely right.

And the lawyer says, You sure you got everything right?

He says, Positively, so and so, and so and so.

The lawyer offers it in evidence and you say then they can cross-examine him and you say that is all right?

Mr. Gladstein: They can cross-examine the author much easier than they can cross-examine Karl Marx or Joseph Stalin. When the Government offered the Communist Manifesto and the Foundations of Leninism into evidence you received those documents.

The Court: They were teaching those things in the schools.

Mr. Gladstein: And the testimony here by this witness is that the document that we are now offering in evidence represents in one handy compiled place a summary of his own teachings which contain the historical changes in his own ideas, in his own

—Tr. Tr. 8296—

advocacies during the period covered by this document, and he is fully subject to cross-examination as to any and every part of it; whereas we when the Government put in evidence such things as the Communist Manifesto, Foundations of Leninism and things of that kind are left with no opportunity to cross-examine.

The Court: Now, why don't you let Mr. Crockett have his turn? Then Mr. McGohey may want to say something, and I do want to finish up by one o'clock, and then we can have the jury back.

Mr. Gladstein: And may I say just one thing more? This very exhibit, your Honor, was, I am informed, received in evidence yesterday—a quotation received—and I am prepared to state that that

was a proceeding in which the United States is seeking to deport an alien whose name is George Perinsky. It was offered in evidence on behalf of and in defense of the alien, who was there charged with having belonged to an organization which advocated, so it was claimed, the overthrow of the Government by force and violence, and it was alleged that that party was the Communist Party. My understanding—my information is that at first the Government took a position of objecting to the document, but subsequently either the Government withdrew that objection or the presiding inspector, I think that is the

—Tr. Tr. 8297—

title that is used in those proceedings now, ruled that the document was admissible on behalf of the alien, and I respectfully refer your Honor to that ruling in connection with this very same exhibit.

The Court: All right. Now let's hear from Mr. Crockett.

Mr. Crockett: I really don't wish to enlarge on the arguments given by Mr. Gladstein. I think they have sufficiently covered the legal point. I merely want to repeat and emphasize something that I have said to the Court on several prior occasions, and this is in its nature a political trial, the first one that we have had in the United States. When we look for precedents, we don't find precedents. This is a case in which we have to make the precedents as we go along. The fact, therefore, that a document such as this in the ordinary criminal case may or not be received in evidence, I submit, is not a precedent. It certainly was not a precedent on the part of the Gov-

ernment when they had the Vishinsky book, which came out, as I recall, subsequent to the date of this indictment, and the review of that book, which was published in the Daily Worker long after the date of the indictment actually marked in evidence here, and the only reason that I could see why it was not offered

—Tr. Tr. 8298—

or received in evidence was because the witness who was on the stand said that he had not read the book.

Now, if it is not unusual for the Government to do something like that, and the Government, I submit, should be an example for all of us, then obviously there is nothing unusual in our offering a document that was begun long prior to the indictment, but the final draft of which came out after the date of the indictment.

I submit, your Honor, that this being as it is, a political trial, we cannot be hide-bound by the existence or non-existence of past legal precedents, and we should decide these issues on the basis of the merits and the justice of what is being tried to be done and, on that basis, make our determination that this document should be received in evidence.

The Court: Do you desire to say anything, Mr. McGohey?

Mr. McGohey: Your Honor, very briefly, I think in view of the long argument and the statements which purport to be statements of fact that have been made in these arguments which your Honor has just heard that it would be appropriate to point out and put in the record the basis, at least, upon which

the Government has based its objection to the introduction of this proferred exhibit.

—Tr. Tr. 8299—

I object, first of all, because, upon its face, and I call your Honor's attention to the first page of the paper in which the exhibit appears—now, it is true that that first page with the picture, I think, was excluded from the offer, there was something said about it, but when your Honor is considering it, you cannot fail to take cognizance of the fact that the first page of this paper says, "In Defense of the Communist Party and the Indicted Leaders." So it is clearly a self-serving declaration and I say, your Honor, that on its face it shows that it is a piece of manufactured evidence by a co-conspirator, published after the close of the Government's case, which occurred upon May 19, 1949, and after an order was issued by this Court directing Mr. Bigelow, as Commissioner, to take the depositions. That order was signed on the 17th. And I point out furthermore, your Honor, that this statement, which is said to consist of 27,000 words, was made at a time when there had been, as there is now, repeated representations to your Honor and to this Court that the man who purports to have made this statement was so sick that he couldn't even have the depositions taken in his own home at the time he chose himself.

Now, you have just had argued to you something

—Tr. Tr. 8300—

which has been argued and commented upon in the Circuit Court and that is, that in some manner there ought to be a whole new set of special rules for the

handling of this case; in other words, in 1949, you are now being asked to throw out the window the rules of evidence that have been developed in the centuries of Anglo-American law as, indeed, the Circuit Court was asked to make special rules and to acknowledge that there ought to be special rules for the treatment of those defendants whom your Honor held in contempt or whom your Honor remanded for the violence of their action in the courtroom.

I suggest to your Honor that there is no basis for this argument that there ought to be special rules; and under the rules of evidence as we understand them, there is no possible basis for this specious argument of Mr. Gladstein, that by some process of representation, because Mr. Green is on the stand, that, therefore, we can in some vicarious manner examine the man who purports to have made this document.

I object to it and I insist that your Honor is right, that there is no basis for that, and that its admission would violate every elemental rule of evidence in our law.

Mr. Gladstein: May I say one word?

—Tr. Tr. 8301—

The Court: If you ever did that, Mr. Gladstein, I think I would drop dead.

Mr. Gladstein: When I say one word, I mean it in a lawyer's sense.

The Court: All right.

Mr. Gladstein: But I want to say this very briefly.

The Court: All right.

Mr. Gladstein: I want to record my objection to a statement that Mr. McGohey made. I am not going to undertake to reply to him because I think it would be useless, not because I do not think merit is on our side but I just don't think that that merit is going to be recognized, but I challenge Mr. McGohey to withdraw his objection and undertake to prove, if he can, that the exhibit representing this witness's and Mr. Foster's and other defendants' ideas and their advocacies over the past years, I challenge Mr. McGohey to prove that it is a piece of manufactured evidence. And if he doesn't want to accept that challenge, then I ask him in good grace, as an officer of the court which he is so fond to remind people of from time to time, that he withdraw that wholly unprofessional charge that he made.

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—Tr. Tr. 8708—

New York, June 29, 1949

The Court: Well, you accuse me of being an old tyrant and everything under the sun, accuse me of judicial misconduct of various kinds, and I take that in good temper, and you speak about not having a chance to prove your case. You have had ample chance to prove your case and anybody who reads this record can see that you have had. So there is no need of your saying how I cut you out and how I won't take the necessary time. I am going to take the necessary time but I am going to be the one to decide what is necessary.

Mr. Isserman: I must respectfully except.

The Court: That is all right. I suppose that is prejudicial misconduct from your point of view but I intend to give you the necessary time, but I am going to do the deciding as to what time is necessary. The exhibit may be marked in evidence.

Mr. Isserman: May I ask if the Court's instruction with regard to the Negro question is a ruling or only a suggestion?

The Court: I am ruling on matters as they come before me for ruling. As to this particular matter it seems to me that there is no occasion to go into this lynching business. You have rubbed that in again and again and again. We have had lynching and lynching and lynching and Jim Crow and Jim Crow. I say we have had enough.

Mr. Sacher: If we have had enough, it ought to

—Tr. Tr. 8709—

be stopped in the United States of America. So long as it exists, your Honor, it is appropriate to bring it before the Court. I want to say on behalf of the clients I represent that I shall not regard myself as being precluded from laying before the Court and jury all the oppressions—

The Court: That is not what this case is about.

Mr. Sacher: But it happens, and I am sure we can demonstrate to your Honor, that that is precisely what this case is about.

The Court: I don't see how anybody can think that this case has anything to do with whether or not lynching can be stopped.

Mr. Isserman: I want to show that lynching has a relation to this indictment.

The Court: I say you have done it. I say you have done it ad nauseum. You have done it again and again and again. To claim that anybody on this jury or I does not understand the position that you and your colleagues have on that subject is to assume that we are all stupid.

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—Tr. Tr. 8895—

New York, June 30, 1949

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Q. So when you said you did not speak it and you did not read it, it was false in this application, Government's Exhibit 166? A. I have already told you, Mr. McGohey, that the facts in that application are false. I needed a job, I had been deprived of it for political reasons, and I told you that my name is wrong there and the information is wrong there.

Q. Well, the specific question is, did you or did you not answer truthfully or falsely when you said you did not speak any foreign language and when you said you did not read any foreign language? Was that true or false?

Mr. Isserman: The question has been answered and this is repetitious.

The Court: I will allow it.

Mr. Isserman: And I object to it.

The Court: Overruled.

Mr. Sacher: I would like to quote the Court and say "This is pretty small pickings."

The Court: That is just one more mark against you, Mr. Sacher. You would not dare do that but for what I have said as to this trial, and you may live to regret it.

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—Tr. Tr. 8937—

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Q. Isn't it a fact, Mr. Green, that you went abroad in 1932 and in 1933, and in 1934, and 1935, and 1936, and 1938? A. It may be a fact.

Q. Is it a fact? A. Well, I don't recall each one of those years that you mentioned, but I have said that I made a number of trips abroad.

The Court: Mr. Reporter, let me have those dates.

(Record read.)

Mr. Gladstein: If your Honor please, I move to strike out the questions and answers dealing with this subject, and I now interpose an objection based

—Tr. Tr. 8938—

on the incompetency, irrelevancy and immateriality of this line of questions, and I assert moreover that it is perfectly clear that the United States Attorney is pursuing this subject for no other purpose than to seek to introduce something prejudicial against this witness, and not for any purpose legitimately within the confines of proper cross-examination.

The Court: You know, Mr. Gladstein, I have so often said that I desire no argument—

Mr. Gladstein: Very well, I shall not pursue it.

The Court: I notice that you never pay the slightest attention to it. You get up again and again and you argue knowing that I have stated if it is desired to present argument that you should seek permission. I take it that your simply neglecting that all the time is deliberate.

Mr. Gladstein: No, your Honor, I didn't neglect it and I didn't intend it, but I felt a little tardy in making my objection and I rose to tell you why I made a motion to strike and ask your Honor to consider my objection.

The Court: Yes. Your motion is denied.

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—Tr. Tr. 9145—

New York, July 6, 1949

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Q. Mr. Green, I desire to read to you some testimony by Mr. Gates: "Q."—

Mr. Gladstein: What is the page, please?

Mr. McGohey: 7469.

—Tr. Tr. 9146—

Q. "Was the book 'Toward Soviet America' taught or advocated by the Communist Party at any time as part of its teaching or advocacy?"

And then after some colloquy, the answer:

"So far as I know it never was.

"Q. It never was what, Mr. Gates? A. It never was adopted or approved by the National Committee or the National Board or Political Committee or National Convention of the Communist Party."

And then the Court says:

"But let me just ask him a question.

"I take it you mean by that at no time to your knowledge was that book part of the doctrine that was taught and advocated by the Communist Party?

"The Witness: That is correct."

Do you recall that testimony by Mr. Gates? A. I recall it.

Q. Now, as a matter of fact, weren't there occasions when "Toward Soviet America" was recommended by the Communist Party or its leadership? A. I have no recollection of that.

The Court: Is that that book of Foster's?

Mr. McGohey: Yes.

Mr. Gladstein: May I point out—I object to that question. It is not related to the portion read from

—Tr. Tr. 9147—

the transcript. The portion read from the transcript dealt with whether or not that book constituted part of the advocacy and teaching. That is quite different from asking whether or not anybody in the Communist Party recommended that that book be read.

That was Mr. McGohey's last question, I think—it asked whether the book was recommended.

The Court: You know, Mr. Gladstein, since you have been back here you have, on every single occasion that you have arisen—you have wholly disregarded my direction that there be no argument or discussion without asking my leave to do so, and the effect of your interposition and your comments is evident in the record here. A good part of every day is spent in the same sort of wrangling that I have tried to eliminate.

Now I should think that after I have spoken to you so many times about it that you would realize that pretty soon I am going to have to find that you do it deliberately.

You remember the last time I asked you whether you did it deliberately, you said, "Oh, no," that it was an inadvertence? Do you remember that? Now please try in the future to follow my direction.

Now go ahead, Mr. McGohey.

—Tr. Tr. 9147a—

I will overrule Mr. Gladstein's objection.

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—Tr. Tr. 9597—

New York, July 12, 1949

Mr. Sacher: If it please the Court, I now offer Exhibits 9-B for identification and 9 x C for identification in evidence.

Mr. McGohey: Both of them?

Mr. Sacher: Yes. We will only read it once, though.

Mr. McGohey: Object to both of them.

The Court: Sustained.

Mr. Sacher: I should like an opportunity to be heard on this, your Honor, because I think—

The Court: No, I don't want to hear any argument on that. It seems perfectly clear to me.

Mr. Sacher: You mean—

The Court: I don't want to have happen again what happened when that paper that was prepared by Mr. Foster was offered.

Mr. Sacher: But, your Honor, this was approved by the Communist Party.

The Court: I know. I don't want any argument on it, Mr. Sacher.

Mr. Sacher: Not only that but—

The Court: Please do what other lawyers do when the Court has ruled.

Mr. Sacher: Well, this man has to defend himself. This is why he was a Communist and I think that—

—Tr. Tr. 9598—

The Court: Please don't become offensive, Mr. Sacher. I understand he has a right to defend himself. I am giving him every opportunity under the rules of law to defend himself, and this insinuation of yours, that I am doing something different, is very offensive to me, and I hope you won't repeat it.

Mr. Sacher: But it is incomprehensible to me that a document written at the instance—

The Court: That may be because you read so much of this material here that you got queer no-

tions, I don't know, but however that may be, I rule it out.

Mr. Sacher: Would it be permissible to excuse the jury and permit me to—

The Court: I don't desire any argument on this. I don't see any necessity. It seems perfectly clear to me.

Mr. Sacher: Will your Honor give me an opportunity to go over this exhibit during the recess, to offer individual sections of it, if I may?

The Court: I will give you the opportunity to do that. It seems to me offhand that the objection goes right to the root of the whole matter.

You have an impression that what a person may write and then have some resolution issued, that necessarily that makes it admissible, and I cannot

—Tr. Tr. 9599—

see that, but you may go over it and you may offer such portions as you desire and I will give them consideration.

Mr. Sacher: The only thought I have, your Honor, is that when a man has written under these auspices—

The Court: I don't want any argument, Mr. Sacher. If you will, please make a special effort to desist.

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—Tr. Tr. 9632—

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A. Well, I'll say that to the best of my recollection that this isn't in the record,—

Q. Very well. A. (Continuing) That the Judge called me nigger, but he did call me nigger and he called my people niggers.

Q. But you didn't put that in that record when you prepared it, did you, Mr. Davis? A. I couldn't—

Mr. Sacher: Just a moment. I object to the question on the ground that it assumes that Mr. Davis could put it in the record if he wanted it there.

Mr. McGohey: And I object, your Honor, to this—

The Court: You know, Mr. Sacher, you are certainly a problem. Now, you have no right to make any such statement. You must know as a lawyer that it is absolutely not so. A lawyer has a right to propose as the record what he claims the record is.

Mr. Sacher: But this is not a proposal. This is the ultimate record, your Honor.

The Court: Well, I know. I think if you will leave out those comments, it will be better.

Mr. Sacher: Well, I stated the grounds of objection.

—Tr. Tr. 9633—

The Court: This particular one seemed to me especially misleading. A lawyer has a right to propose the record as he claims the record accurately should be. Evidently that was not done here.

Mr. Sacher: But, if it please the Court, that statement I do not think is, at this juncture, warranted, but whenever Mr. McGohey can give the impression—

The Court: You know, I told you some time ago I wasn't going to let you get away with a thing, and I am not. Just keep that in mind.

Mr. Sacher: All I want to do is to protect the rights of my client.

The Court: I understand.

Mr. Sacher: Beyond that I want nothing more.

The Court: You would protect him a lot better if you would leave out this misleading statement.

Mr. Sacher: I object to that. I have made no misleading statement.

The Court: Well, you did make a misleading statement.

Now I state the fact to be that a lawyer, when he proposes a record, may put in there what he thinks accurately and truly should go there.

Now did you do that, Mr. Davis?

—Tr. Tr. 9634—

The Witness: I can't recall.

The Court: All right.

The Witness: That was my first trial case. I made many mistakes in it and it is quite possible that I did not take advantage of every legal recourse that I had, but it was my first trial case, as I recall, and I am pretty sure that I made many errors, but what I was trying to do was basically sound, and so I don't say at all that I got that into the record but I tried in the way I knew how to get it in.

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—Tr. Tr. 9691—

. . . . . .

Q. Will you please explain your answer?

Davis—Redirect
Colloquy

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you believe that the violation of segregation laws would be regarded an offense by the Motor Vehicle Bureau in the City of New York?

Mr. McGohey: Objection.

The Court: Sustained.

He is supposed to answer the questions truthfully.

Mr. Sacher: Well, in view of your Honor's observation then I ask that the witness be given an opportunity to state whether at the time that he signed this great serious document, the application for an automobile license,—

The Court: You can't belittle it that way.

Mr. Sacher: No, it is a great serious document.

The Court: I see you do that all the time.

Mr. Sacher: I wish to apologize. I have a proper regard for motor vehicle licenses.

The Court: It would be better if you do less of

—Tr. Tr. 9692—

that.

Mr. Sacher: In light of your Honor's observation I ought to be able to elicit the attitude of this witness at the time of this application some 20 years after that event in regard to the offense of violating the segregation laws of Georgia. That is all I wish to have so that the jury may see what his state of mind was.

The Court: I thought he didn't even remember putting it down.

Mr. Sacher: That is not what he was asked.

The Court: He was asked whether he said that and he answered it that way.

Mr. Sacher: I don't remember at the moment.

The Court: That is what I thought I heard him say a little while ago.

Mr. Sacher: He wasn't asked that; he was asked whether the signature on this photostat was his signature and he confessed to inability to recognize it on the photostat. But this specific question was not asked of him.

The Court: I sustain the objection.

. . . . . .

—Tr. Tr. 9875—

New York, July 14, 1949

Q. Miss Hartman, did you send this letter (handing)? A. I gave it to club leaders to send out or to give to people to the club.

Q. And was this subsequent to the time that the witness Philbrick came in and inquired, I think, according to your testimony, when you would get started?

Mr. McGohey: Objection, your Honor. That is exactly what your Honor ruled out, and I ask that your Honor direct Mr. Crockett not to include in the question matters which your Honor has ruled out.

The Court: Well, you know, it happens so much here I get sort of used to it. I think we have got an

intelligent jury here and they are just not going to pay any attention to that.

I will sustain the objection.

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—Tr. Tr. 10,036—

New York, July 19, 1949

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Mr. Crockett: Yes, your Honor. Confusion stems from the fact that he testified to about two meetings held in the month of February—is that right, Mr. McGohey, February 1948?

The Court: But on the very page—

Mr. Crockett: The one on 2838 refers to a meeting at the home of a person named Peg.

The Court: Yes, but you referred to page 2839, and I put it right down because I keep careful track of what is going on.

—Tr. Tr. 10,037—

Mr. Crockett: And then Mr. McGohey—perhaps your Honor did not hear him—calls my attention that Peg's name is on page 2838.

The Court: Well the fact is that the first page you mentioned yourself, page 2839.

Mr. Crockett: That is correct.

The Court: And on that page 2839 there is a reference to precisely what I said, which you seem to deny, namely, that it had to do with a meeting in February 1948 at Martha's apartment where Martha led the meeting.

Mr. Crockett: I said in February 1948—

The Court: I do not quite understand why you said "No" when I mentioned that.

Mr. Crockett: Well, we won't argue about that.

The Court: Well, it appears that my notes were correct, and that is the instance you are directing the attention of the witness to.

Mr. Crockett: And directing the attention of the witness to this series of meetings in which Martha figured, according to Philbrick's testimony.

The Court: Well, I think the important thing is to find out if there was a meeting referred to by Mr. Philbrick at which this witness was present, and then we can go on from there. I thought that is what you were doing.

—Tr. Tr. 10,038—

Mr. Crockett: Well, suppose I leave that for the present until I get the particular page.

The Court: Well, that sounds crazy. You always seem to do that. The minute we begin to clear something up someone says "Let us drop it and go to something different."

Mr. Crockett: Well, I have no objection; I will go right on. I am dealing with Martha who figured in Philbrick's testimony, and I think later on he identified her as being a Martha Fletcher who lived on Beacon Hill in Boston.

The Court: Well—

Mr. Crockett: And at page 3185—

The Court: Well, if you desire to drop the

subject and turn to something else I certainly will not prevent you from doing that, so I will not stop you.

Mr. Gladstein: I didn't hear your Honor's remark. Did your Honor use the word "crazy"?

The Court: I thought it was kind of crazy, to begin to go into a subject and then drop it. I think that was kind of amazing. Maybe you could use a little different word.

Mr. Gladstein: I think your Honor's remarks are quite objectionable.

The Court: Well, every time you get back to court

—Tr. Tr. 10,039—

you find something objectionable, you proceed to object, and that is perfectly all right.

Mr. Gladstein: Because every time I get back to court your Honor makes objectionable remarks.

The Court: I will repeat, Mr. Gladstein, for your personal benefit, that this constant business which we have, which for the last few weeks, fortunately, in your absence, has been missing, of getting into something and then the minute you begin to get somewhere with it drop it and go to something else, I have always thought it was a little curious, and I used the word "crazy" not to indicate absolute insanity but something curious and out of the ordinary. So now let us leave that issue and get on to work.

Mr. Gladstein: Not until the record shows I make my objection to the Court's remarks and the explanation thereof still does not take away the effect of

these remarks which are improper. I think they constitute misconduct.

The Court: Well, you mean judicial misconduct?

Mr. Gladstein: Oh, of course.

The Court: That is what I thought. Your objection is noted.

Mr. Gladstein: All of my statements in the course of this trial, when I had asked the Court to assign

—Tr. Tr. 10,040—

remarks it has made as misconduct were intended—

The Court: Well, I suppose I should realize that you are talking back, and I suppose it better if I remain quiet. You are just trying to bait me on to some kind of remark and I should have realized it in the beginning, so please sit down and let us get on to something else.

Mr. Gladstein: I do so but let the record show that the last remarks that the Court makes are misconduct.

The Court: Yes.

Mr. Gladstein: And I ask your Honor to admonish the jury to disregard it.

The Court: I do.

Ladies and gentlemen of the jury, disregard this little passage here. It has no significance whatsoever, no bearing on the case, and put it out of your minds.

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—Tr. Tr. 10,061—

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Q. Do you have with you your discharge certificate or

photostatic copy of the same? A. I do.

Q. May I see it?

(The witness hands to Mr. Crockett.)

Mr. Crockett: If the Court please, I should like to offer this in evidence with permission to withdraw it after reading pertinent portions of it to the jury.

Mr. Mr. McGohey: I object to it.

The Court: You mean you object to his withdrawing it after it is read?

Mr. McGohey: I object to the introduction of it as an exhibit in this case. I think the question of whether this witness was discharged from the Army is of no materiality whatever.

Mr. Crockett: I haven't asked the witness whether he has been discharged from the Army, Mr. McGohey.

Mr. McGohey: Whatever the purpose was the paper indicating his discharge in my opinion is neither relevant nor material to the issues in this case. I object to it.

Mr. Crockett: May I be heard on that?

The Court: Yes.

Mr. Crockett: The witness has testified that he was out of the country during the period concerning which there has been testimony by the witness Philbrick.

—Tr. Tr. 10,062—

Mr. McGohey: Now there we go back again. Now there is no statement that the witness Philbrick has testified to this period, this 1946 period, and again

I call your Honor's attention to the record. He did not testify—

Mr. Gladstein: If your Honor please,—

The Court: Mr. Crockett,—oh, now we have Mr. Gladstein. The jury is excused.

Mr. Gladstein: I think Mr. McGohey ought not to make references of that kind when he knows the exhibit talks about Negro History Week.

Mr. McGohey: There we go again.

The Court: The jury is excused, Mr. Gladstein.

Mr. McGohey: You have no right to do that. You know, it is not in the record.

The Court: Just a moment. Let the jury go out.

Mr. Gladstein: Mr. McGohey and your Honor are both shouting at me at the same time.

Mr. McGohey: Your Honor, there hasn't been any shouting. If there has been any it was by our friend.

The Court: If I did any shouting I am certainly not conscious of it, my goodness. But Mr. Gladstein will always state the facts in his own inimitable fashion. He has been wrong so often I suppose one more time won't hurt.

—Tr. Tr. 10,063—

(The jury left the courtroom and the following occurred:)

The Court: What is it that provoked you so, Mr. Gladstein?

Mr. Gladstein: The first thing is your Honor's last remark that I have been wrong in my statement of facts so often and here is another occasion.

The Court: Would you like me to enumerate them?

Mr. Gladstein: I will accept your Honor's ruling on it made heretofore on the basis of the determination here now.

My objection was to what Mr. McGohey was saying before the jury that he was seeking to give and did try to give the impression that Mr. Crockett was trying to create out of whole cloth the proposition that Philbrick lied when he said that he had worked for or prepared with this witness a certain leaflet.

The Court: But as you not only tried but deliberately did make the statement that the exhibit which has not been received in evidence contained the numerals 1946. I heard that myself.

Mr. Gladstein: I made that statement and it is a true statement.

The Court: The rule of law for attorneys to abide by is not to tell the jury things in exhibits that are

—Tr. Tr. 10,064—

excluded from evidence. You seem to feel that you are not bound by the ordinary rules of evidence.

Mr. Gladstein: I don't see how your Honor can say that. I rose to ask the Court to instruct Mr. McGohey to submit to the ordinary rules of evidence.

The Court: And you felt the way to do it was to take the law in your own hands and tell the jury what was in it.

Mr. Gladstein: I thought your Honor was excusing the jury to permit me to state my point and

now as I started to state it I have had three or four interruptions by the Court.

The Court: You seem to feel interruptions by the Court are illegal and wrong and when you and your colleagues are in a case you are to do all the talking and I am to remain silent. I haven't the remotest intention of doing that.

Mr. Gladstein: No, no, and I didn't have the remotest conceivable idea of doing that. Just as we are bound by the rulings of the Court not to refer to the contents of an excluded or not yet admitted exhibit as a fact, so it is the duty of Mr. McGohey not to make speeches which give the impression that something is not contained in the document that we by obvious implication have been claiming is contained in it. In other words, the rule works both

—Tr Tr. 10,064-A—

ways. If we cannot speak as to what is in the document neither can Mr. McGohey attempt to imply that something is not in the document that is there.

—Tr. Tr. 10,065—

The Court: That is what I don't think he did.

Mr. Gladstein: I think he did and I think the record clearly supports that not only by what he did but the manner in which he tried to indicate that the time was not there when the document plainly says so. It talks about Negro history week.

The Court: Where does that leave us? As I see it, it leaves us at the point where it is better to go on with the interrogation of the witness with both sides refraining from referring to what is in the document or what is not in the document. Then

when the time comes when it is re-offered, that is one thing. When the time comes when it is offered and rejected, if it is, that is another thing. But all these comments that we have been so free from while you were away, Mr. Gladstein, it seems as though they are starting again; and I really think you will serve your clients best by just having us go along quietly and calmly.

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—Tr. Tr. 10,243—

New York, July 20, 1949

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Q. I will ask you, Mrs. Hood, to tell me by what name Frances Smith was known in the Communist Party in Boston. Do you prefer not to answer that question? A.

—Tr. Tr. 10,244—

She was known as Frances Smith at the time we were speaking.

Q. Is she still a member of the Party?

Mr. Gladstein: I object.

Q. Now?

Mr. Gladstein: I object to that.
The Court: I will allow it.
Mr. Gladstein: As of now?
The Court: Yes, certainly.
Mr. Gladstein: Since the indictment?
The Court: Yes.
Mr. Gladstein: Then the rule has changed.

Hood—Cross
Colloquy

Mr. McGohey: Of course, the rule has not changed. Your Honor knows that.

The Court: We have a witness who herself volunteers that she has observed in some way that the name Frances Smith was on one of the exhibits.

Mr. Gladstein: And it is true. It is.

The Court: That she knew her by a different name than Frances Smith obviously in some way connected with the Communist Party here, and I am going to get to the bottom of it if it is possible to do so.

Mr. Gladstein: Now your Honor, I object to the inferences that flow from that remark about getting to the bottom of it. The witness has said that she

—Tr. Tr. 10,245—

knew a woman by the name Frances Smith.

Mr. McGohey: I object to these trial summations.

Mr. Gladstein: It is not a summation; it is an effort to state the basis of my objection.

The Court: Mr. Gladstein, it is the old story. I told you not to argue, to always seek my leave before you did. When you are away we get along very nicely and the minute you are back we get into these things. I think we can bear it patiently and no great harm is done.

What is it you wish to argue?

Mr. Gladstein: Only this: the witness has not said anything that refers to the present moment in terms of name, the present married name. She has testified that she knew somebody named Frances Smith; that that person married, at some date which is not clear;

and I think it is no secret that when a woman gets married she usually changes her name to her husband's name.

The Court: I think it is evident that the witness tried to give the impression that that is all there is to it and I want to get to the bottom of it.

Mr. Crockett: I want to register an objection to the remark that the witness tried to give the impression that that is all there is to it.

The Court: It is all in the record.

—Tr. Tr. 10,246—

Mr. Crockett: My objection goes to the insinuation that the witness was not telling the truth, which unfortunately does not go on the record.

The Court: Insinuation?

Mr. Crockett: Insinuation that the witness is not telling the truth.

The Court: I don't see how you can draw anything like that from what I said. Simply listening to her testimony, I got the distinct impression myself that the witness was trying to say in effect that this woman had a maiden name and a married name and that is all there is to it.

Mr. Crockett: She didn't say that in effect; she said that.

The Court: If I say she said it and you say she said it and Mr. Gladstein says she said it, what is there left to argue about?

Mr. Crockett: Then you add that you are trying to get to the bottom of this to give the impression that somebody is lying, and I submit with all due respect that that is an improper remark.

Hood—Cross
Colloquy

The Court: You are the ones, you with Mr. Gladstein, who are obstructing the cross-examination. Naturally, in response to your questions which seek to cut off further questions on the subject, I say let's

—Tr. Tr. 10,247—

get to the bottom of it. What is there wrong about that?

Mr. Gladstein: Well, there are people whose names have been mentioned in this courtroom since the commencement of this trial who have lost their jobs.

Mr. McGohey: There isn't a scintilla of proof of that.

Mr. Gladstein: I will offer proof of it.

The Court: You will offer proof of it?

Mr. Gladstein: Yes.

The Court: We will meet that when we come to it, and I think it is better if you abstain from further obstructing the cross-examination and let the cross-examination proceed.

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—Tr. Tr. 10,253—

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Q. Isn't it a fact that Jack Simon got the highest number of votes? A. Not to my knowledge.

The Court: You know him? This Jack Simon?

Mr. Gladstein: Is the Court asking a question?

The Court: Yes, I am.

Mr. Gladstein: I would like to hear what it is.

The Court: I am asking the witness if she knows this man Jack Simon.

Mr. Gladstein: I object to that.

The Court: Overruled.

The Witness: I remember the name.

The Court: I didn't ask you that, Mrs. Hood.

The Witness: No, I didn't know him personally.

The Court: I say, do you know him?

The Witness: I do not know him. The name is familiar to me. That is what I meant to indicate.

The Court: Do you have some special meaning you give to the word "know"? I thought it had a rather common meaning. You seem to think it means something different from what I do.

Mr. Gladstein: No, your Honor.

The Witness: I should say No to the question. I do not know him. I didn't know him.

—Tr. Tr. 10,254—

Mr. Gladstein: I wish to object to the manner in which the Court—

The Court: The manner in which? I don't understand what you mean. You have been trying throughout this case by continuous number of absolutely false statements on this record to put down things that I am supposed to have said and done—gestures, indications of one kind or another. You will please stop that. I ask those questions in a perfectly ordinary tone of voice and without any manner that is unusual in any degree. I am not going to sit here and permit you to sprinkle this record with false statements and do nothing about it.

Mr. Gladstein: I assign your Honor's remarks

as misstatements of fact and prejudicial conduct prejudicing me—

The Court: You can easily avoid all this by stopping this procedure of putting false statements on the record.

Mr. Gladstein: I assign that remark as similar prejudicial misconduct.

The Court: You can assign all you want, but if you think I am going to sit here when you say I do things that I do not do, you are fooling yourself.

Mr. Gladstein: I ask your Honor to admonish the jury to disregard the things you have just—

—Tr. Tr. 10,255—

The Court: Ladies and gentlemen of the jury, I have often told you the case is to be decided by you on the proof, the evidence that comes from the witness stand and the documents in evidence. I repeat that nothing that may be done by the lawyers is proof either for or against any of the parties in the case and you will accordingly disregard what they may say or do, or any comments that may be made by me in that connection. They are of no concern to you nor do they have any bearing upon the issues.

Now go ahead, Mr. McGohey.

Mr. McGohey: Now, if the Court please, I would like the Court's permission to make a brief statement in regard to the colloquy just had.

Mr. Crockett: And after Mr. McGohey finishes I should like permission to make a brief statement for the record.

Hood—Cross
Colloquy

—Tr. Tr. 10,256—

Mr. McGohey: Have I your Honor's permission?

The Court: Yes, you have my permission, Mr. McGohey.

Mr. McGohey: Ordinarily it is not the function of counsel on either side in litigation to inject themselves into a controversy between the Court and counsel on the opposition, and I should not presume to do it now, your Honor, except for the fact that it seems to follow a definite pattern for the purpose of interrupting either direct or cross-examination by the Government.

Now, just a minute ago your Honor was charged with having said or done something which was designed to convey a notion to the jury hostile to the defendants. Mr. Gladstein, in arising to talk about it, was required to request your Honor to repeat the question that you asked because he said he couldn't hear it. Now, he is directly in front of your Honor and I submit that if it was said so quietly that Mr. Gladstein could not hear it, it must have been said so quietly that the ladies and gentlemen of the jury could not have heard it. So that raises the question in my mind, why is it done? It is done at a time when I am pressing for an answer to a question, which I have a right to ask on cross-examination, and it is being done at a time when we are about approaching the recess period.

—Tr. Tr. 10,257—

Now, I object to that, your Honor. I object to that and I ask your Honor to please enforce the rule which your Honor adopted months ago, and

which I am afraid Mr. Gladstein has been observing in the breach, that before argument be made in support of objection, the Court's permission to make the argument be secured because, I call your Honor's attention to the fact, since I started my cross-examination at the beginning of this afternoon session, I have been interrupted by long arguments by Mr. Gladstein and in no instance did he first secure your Honor's permission. So that the pattern is a part of a plan merely to disrupt the cross-examination, and, I say, to take the jury's mind off the point of the question.

Mr. Gladstein: Your Honor, may I be permitted a moment in reply?

The Court: No, Mr. Gladstein. I think you have said enough.

Mr. Gladstein: Can I waive the recess then so as to set Mr. McGohey's mind—

The Court: You waive the recess?

Mr. Gladstein: —so far as we are concerned, so it won't seem to anybody that the question of 3.30, if it is 3.30 or about it, had anything to do with my asking the Court about the Court's question. Rather

—Tr. Tr. 10,258—

than having anything to do with Mr. McGohey—

The Court: You always aim your shafts at me.

Mr. Gladstein: Your Honor was asking the question to which I was raising the objection. It wasn't Mr. McGohey and it so happens, and the fact—

The Court: Maybe we will all forget what was going on in a little while.

Mr. Gladstein: I hope not.

The Court: But I say I am going to keep my mind on it.

Mr. Gladstein: But when Mr. McGohey makes about two or three clear misstatements of fact, I should be permitted to point those out to your Honor.

The Court: Well, I suppose we would turn the trial into a dispute of questions of fact when, as I understand the judicial system here, I am the one to determine what happens in my court, and I shall do that to the best of my ability.

Mr. Gladstein: That is not what I was raising, your Honor.

The Court: Well, I think if you will just quietly sit down now and let Mr. McGohey proceed, it will be the wisest course to pursue.

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—Tr. Tr. 10,263—

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Q. Do you know anybody in Boston by the name of Grace Lorch?

Mr. Gladstein: I object to that.

The Court: Overruled.

A. Do I know anybody in Boston named Grace Lorch?

Q. Yes. A. There was a girl named Grace Lorch in Boston and I knew her, yes.

Q. Is she a member of the Communist Party?

Mr. Gladstein: I object to that.

A. I never asked her.

Mr. Gladstein: Just a moment.

The Court: How is that relevant at the moment, Mr. McGohey? Does the name come into the case somewhere?

Mr. McGohey: Well, I have been asking, your Honor, whether or not a person named Grace Lorch wasn't one of those elected at this convention to be a delegate—

The Court: Yes, I will allow it.

Mr. McGohey: —from Boston or from Massachusetts to the National Convention.

—Tr. Tr. 10,264—

The Court: I will allow it.

Mr. Crockett: Your Honor, doesn't this fall under that rule I have heard so much about, repetition? This witness has answered the question time and time again. Now we approach it from another angle, and it come right back to the same thing. As I understand the Court's ruling you want to cut down on this repetition.

The Court: I think what you understand from my ruling is that you are not supposed to argue without asking my leave. Now stop it.

Mr. Crockett: I am asking a question of the Court.

The Court: The answer is, the objection is overruled.

Q. You say you do know a lady named Grace Lorch?

A. I said—

Mr. Gladstein: No, that is not what the witness said.

A. (Continuing) I said—

Mr. Gladstein: Just a minute.

The Court: You know, I cannot escape the conviction that Mr. McGohey is right, that this bobbing up and objecting is for some purpose.

Mr. Gladstein: Well, if your Honor will have the record read you will find the witness said she knew a

—Tr. Tr. 10,265—

person by such a name at one time. Mr. McGohey now says "so you do know".

The Court: I never saw so much fuss and throwing of dust in the air. It must have some purpose.

Mr. Gladstein: Well, it is for the purpose of revealing the unfair thing Mr. McGohey is doing—

The Court: We are going on—

Mr. Gladstein: —he is twisting the testimony.

The Court: —we are going to sit here until Mr. McGohey is through with this phase of the cross-examination.

Mr. Gladstein: We can stay until ten o'clock, I don't care.

The Court: So if you think there is going to be some little recess here you may be mistaken.

Mr. Gladstein: Your Honor, if you will only be good enough to have the record read, to show—

The Court: I do not need to have the record read, but I wish you gentlemen would give Mr. McGohey a chance to proceed with his cross-examination.

Hood—Cross
Colloquy

Mr. Gladstein: Then why doesn't Mr. McGohey abide by the rule, which is that when you say to a witness something that refers to what the witness has testified to, a lawyer isn't supposed to distort or change the tense or meaning or context or content of the statement.

—Tr. Tr. 10,266—

The Court: Have you some idea you are trying to express?

Mr. Gladstein: Only that if your Honor will read—have the record read, you will see that Mr. McGohey in asking the last question misstated the witness's answer, that's all.

The Court: Well, this is getting too—too technical for me. I thought he was just trying to find out about her knowing this woman whose name he mentioned, and whether she was a member of the Communist Party. Now the witness has said that she knew the women. Now the next question is, is that women or was that women at the time of that convention a member of the Communist Party?

Now what is the answer, Mrs. Hood?

The Witness: I didn't ask her and I would rather not answer that question.

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—Tr. Tr. 10,335—

New York, July 21, 1949

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Q. Have you ever been convicted of a crime? A. I was arrested once.

The Court: Strike that out, and repeat the question.

Q. (Read.)

Mr. Gladstein: Perhaps the witness doesn't know. Sometimes you get picked up—

The Court: Well, he wasn't asked whether he was arrested or not. I don't want any comments at this point.

Mr. McGohey: If the Court please, may I remind—

The Court: You will get an answer.

Mr. McGohey: —may I remind the Court of what occurred yesterday afternoon? Here it comes again. Whenever I press a witness, Mr.—

The Court: A barrage of objections—

Mr. McGohey: —Mr. Gladstein, in defiance of the Court's order, undertakes to make an argument suggesting the answer, and I ask that he be directed to desist.

The Court: Please refrain from that today, Mr.

—Tr. Tr. 10,336—

Gladstein.

Hashmall—Cross
Colloquy

Mr. Gladstein: Your Honor, I think in all justice—

The Court: There is no occasion for discussion here. The question was perfectly plain, whether he was convicted of a crime, and he spoke about being arrested once. I struck that out. Now he will answer this question, and I don't want any comment or suggestion from counsel.

Mr. Gladstein: Certainly, he will answer, and I don't want any impression left that he is trying not to.

The Court: You are just going to keep on talking.

Mr. Gladstein: No.

The Court: Well, I tell you to desist.

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—Tr. Tr. 10,338—

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Mr. Gladstein: I think this is immaterial, not proper cross-examination, quite remote. I object to it.

The Court: Overruled. He says he doesn't re-

—Tr. Tr. 10,339—

member whether he was convicted or not. He is now being asked about what he was charged with, as I understand it.

Mr. Gladstein: Participating, apparently, in distributing leaflets.

Mr. McGohey: Here we go again, your Honor, the same objection that I made before.

The Court: Yes.

Mr. McGohey: Without any leave of Court, my cross-examination is interrupted whenever I press for an answer.

The Court: Yes. I will sustain the objection.

Mr. Gladstein: I would like to count the number of times my cross-examination, during the Government's case, was interrupted.

The Court: Yes, stopping to count that thing, that will be quite a little diversion, which I do not intend to have.

Mr. Gladstein: Yes, and I am willing to say that Mr. McGohey undoubtedly interrupted my examination quite as often as I have ever interrupted his.

(Laughter in the courtroom.)

The Court: It is nice to get a laugh but not important.

Go ahead, Mr. McGohey.

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—Tr. Tr. 10,381—

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Mr. Gladstein: I object to that question, incompetent, irrelevant and immaterial, and, moreover, calls for information concerning today.

The Court: Mr. Gladstein, I wonder if there is any way for me to get you to pay attention to my direction, that if you desire to argue you are to ask my leave.

Mr. Gladstein: Of course, your Honor. I wasn't arguing. I tried to point out the basis of the objec-

tion, not to argue in favor of it. Perhaps your Honor—

The Court: You have forgotten, I take it, that my ruling was that counsel should merely say "I object," and then ask my leave for permission to state anything further. Do you remember that?

Mr. Gladstein: Well, your Honor, of course.

The Court: You are generally very alert and smart, and we have had several colloquies about this, and I ask you, have you forgotten that I gave such a direction?

Mr. Gladstein: No, I haven't forgotten it.

The Court: I want an answer, Mr. Gladstein: Have you forgotten that I gave such a direction?

—Tr. Tr. 10,382—

Mr. Gladstein: I just did answer, your Honor. I said, "No, I haven't forgotten."

The Court: Now, having it in mind, I hope in the future you will observe it.

Objection overruled.

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—Tr. Tr. 10,426—

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Q. I am going to ask you, Dr. Phillips, to summarize for us what you taught in that school, that is, in any way connected—withdraw that.

—Tr. Tr. 10,427—

What you taught at that school.

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: Now, your Honor—

Defendant Dennis: May I be heard on this?

The Court: Yes.

Defendant Dennis: As the Court knows, we are charged amongst other things in the indictment with organizing classes and schools to teach the principles of Marxism-Leninism. I believe it is point 9 in the indictment. I submit that we have the right as well as the obligation, and that the Court and the jury surely should want to hear what are the principles of Marxism-Leninism, and what we have taught and advocated in general and concretely in schools and classes. I believe Dr. Phillips has stated that he taught a class in the early part of '46 under the jurisdiction of the district leadership and in consultation with that leadership, the course which he submitted was approved by the Party leadership as part of the advocacy and teaching of the principles of Marxism-Leninism.

It also happens that the course which he taught, according to his testimony, embraced a part of the course in philosophy which he gave at the University of Washington, and therefore I must urge upon the

—Tr. Tr. 10,428—

Court to reconsider the ruling which has just been made and to permit the witness, at least briefly, to state what he advocated and taught as part of the official advocacy and teaching of the Communist Party.

The Court: Well, I have ruled that there is no proper foundation laid for such proof.

Mr. Gladstein: Because a particular defendant wasn't involved in the conversation, your Honor? Because if that is it, and that is the only thing I heard your Honor say, could I remind the Court that we have heard from Government witnesses who did in no wise connect any of the defendants. Take for example the testimony—and indeed your Honor has permitted testimony from one or two defense witnesses concerning schools that they conducted or participated in as to which there was no immediate direct conversation with any particular defendant.

—Tr. Tr. 10,429—

The Court: Well, I do not desire to have any further discussion on it, Mr. Gladstein. I think I understand the situation very well and it is clear to me that there has been no foundation laid for this proof.

Mr. Gladstein: That simply means, your Honor, that we are not permitted to put in evidence as to what was actually taught in the schools.

The Court: You know, in any ordinary or extraordinary trial that I have ever had any contact with when a matter is presented, argued and the Court rules, the lawyer passes on to something else. But in this case, no, there must be a series of protests and long protests and speeches ad infinitum, and I tell you please don't do that.

Mr. Gladstein: But, your Honor, I called this witness precisely and exclusively to testify to what was taught—

The Court: All that means is that you are sorry that you did not fulfill the requirements that I deem essential.

Mr. Gladstein: I was about to say that precisely because I was heeding that portion of your Honor's request that your Honor has several times announced that your Honor wanted to hear what was taught in the schools and the courses conducted by the

—Tr.. Tr. 10,430—

Communist Party that I called this witness. That is exactly what this witness is here for. And I submit that foundation has been established not only adequately but more than adequately, but now at the threshold of the testimony as to what he actually did teach we are met with objections by the United States Attorney who thereby makes it clear that he does not want the jury to hear what was taught and advocated within the Communist Party schools.

The Court: I suppose there is no way to avoid a certain amount of this thing in this case. I tell you to stop and you don't, you go on. I don't intend to shout or bang a gavel or make a big noise about it and I will not discipline the attorneys during the continuance of the trial for the reasons which I have had occasion to express during the course of the trial a number of times. If after that you insist on going on I have no alternative but to quietly and pleasantly bear it and occasionally tell you again to please stop.

By Mr. Gladstein:

Q. Well, I want to refer to paragraph 10 of the indictment, if I may.

The Court: You may do so.

Q. (Continuing) Let me read this to you, Doctor. It is

—Tr. Tr. 10,431—

charged in the indictment that:

> "It was further a part of said conspiracy that said defendants would conduct, and cause to be conducted, schools and classes for the study of the principles of Marxism-Leninism, in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence."

Now in the class that you conducted did you teach the principles of Marxism-Leninism?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you teach or advocate the duty and necessity of overthrowing and destroying the Government of the United States by force and violence?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: Well, your Honor, I have no questions that I can possibly put to this witness under the Court's rulings because I am blocked from eliciting testimony.

The Court: You don't need to make comments like that, Mr. Gladstein. You know that they are offensive to the Court. You know that every time you say about your being blocked or about my trying

—Tr. Tr. 10,432—

to get something or other over to the jury, all that

sort of thing, it is impugning my motives and practically charging me with dishonorable conduct. As I said, I don't like that and there is nothing I can do about it other than to tell you not to do it. Some day I think probably you may regret that. You have been so persistent in that contemptuous manner of talk—

Mr. Gladstein: I can't complete the examination of the witness under the Court's ruling.

The Court: If you have no further questions, say so.

Mr. Gladstein: I do have further questions.

The Court: And let the matter rest rather than making these comments impugning my intent, impugning my integrity.

Mr. Gladstein: That was not the purpose or effect.

The Court: When you say somebody—and that somebody must be me—has blocked you from doing this or that, it can have no other meaning than that of impugning my integrity. But I bear it in good part. I have had six or seven months of it and I can bear a little more of it in patience and good humor.

Mr. Gladstein: I say that wasn't the purpose.

The Court: I told you a little earlier I am not

—Tr. Tr. 10,433—

the over-sensitive type and I have come to recognize your sarcasm very quickly.

Mr. Gladstein: I think your Honor's observations are not only improper but they represent a strained and incorrect interpretation of what I have said and

done and I submit they are prejudicial and constitute misconduct.

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—Tr. Tr. 10,498—

New York, July 22, 1949

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Q. Now at the outset of the first session in that school, Mr. Kirchmarek, what discussion, if any, occurred with respect to arrangements or plan for the holding of the school?

Mr. McGohey: Object.

The Court: Sustained. Now, Mr. Gladstein, you see the point of that, don't you?

Mr. Gladstein: Well, I suppose your Honor wants to establish some names.

The Court: It is obvious that without that you don't have testimony such as you have in any other case. This case is no different from other cases that you can have conversations with unknown and unidentified people.

Mr. Gladstein: Well, there is nothing unknown or unidentified—

The Court: Nobody could ever refute that sort of proof if witnesses were allowed to come in and say "I had a conversation with a lot of people, I don't remember who they were, maybe this and maybe that." You can't refute that sort of proof, and the law takes cognizance of the fact that there are two sides to every controversy.

Mr. Gladstein: Yes, but I think the law and the Court should take cognizance of the fact that with

—Tr. Tr. 10,499—

respect to certain persons in this day and age the naming of names means persecution.

The Court: Well, you went through that on Mr. Gates' appeal and the Court of Appeals ruled against you. There is no use going into that again.

Mr. Sacher: May it please the Court, I should like to address the Court—

The Court: No, I am not going to have any argument.

Mr. Sacher: Well, I want an instruction to the jury, in the light of your Honor's reference to the Gates decision—I ask that your Honor at least instruct the jury to disregard that and not take it into account in passing on the evidence.

The Court: I will do that.

Ladies and gentlemen of the jury, that has got nothing to do with this case. You will please disregard it. It is only a question of law here, and I rule, as I have right along here, that if you are going to put in evidence you are going to have to show the time and the place and who was there, and if there is conversation with somebody, we have got to know who that somebody was.

Q. Well, the name of George Siskind has been mentioned as an instructor in that school, Mr. Krchmarek. Was he—

—Tr. Tr. 10,500—

Mr. McGohey: Now if the Court please, I object to this. There hasn't been any suggestion by this witness—

If the Court please, may I have permission?

The Court: Yes, you may.

Mr. McGohey: Now here is a deliberate leading of this witness to suggest the name of a man already mentioned. The witness says there was a discussion. It doesn't appear whether it was a discussion of one individual with this witness, or whether there was a group discussion, whether there were five people or ten or fifty, and now Mr. Gladstein, in view of your Honor's ruling, has the effrontery to instruct this witness as to the name of a person previously testified to by somebody else, and I say thereby to suggest to this witness the name of a man whom he is now free to name.

The Court: I think that is so, Mr. Gladstein, and it is entirely improper and you will please not do it again.

Mr. Gladstein: May I put a question to the witness?

The Court: The testimony comes here not according to the commands of counsel, or other persons, but according to the relevancy and propriety of the question.

Mr. Gladstein: Well, I did not utter a command or

—Tr. Tr. 10,501—

anything of the sort.

The Court: It was obvious to me you were telling

the witness it's all right to name Siskind because he is already in the record. I am not so dumb that I can't see that, and everybody else, and I won't have it.

Mr. Gladstein: Does your Honor suppose that an attorney puts a witness on the stand without his first having found out from that witness what he knows, and does your Honor suppose that I did not know what this witness's own knowledge is? I am not telling the witness what to testify. He knows the facts.

The Court: Now that you ask me I think there is a good deal of what he said this morning that you never heard before in your life, but we are not going into that. I am telling you now not to repeat the offense that I have just described to you, and you may ask him to say who was there and not tell him, or any other witness, that he may answer that there was something already in the case about that man, or somebody else has named that person. I consider that wholly improper. Now you will please not do it again.

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—Tr. Tr. 10,671—

New York, July 27, 1949

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Q. Was Mr. Williamson's title at that time district organizer? A. Yes.

Q. Is that what the State Chairman was known at that time? A. District organizer, not the chairman.

The Court: Are you saying that State Chairman and district organizer are the same thing?

The Witness: No, it is not the same thing, but his title at that time was district organizer.

The Court: Then he was not the State Chairman?

The Witness: No.

Mr. McGohey: Now if the Court please, will you hear me for a second?

The Court: Yes, I will.

Mr. McGohey: I object to this leading of the witness in this way. That was a clearly leading question. I do not know that it is of great importance because it only goes to the question of what the title was but the witness was asked what Mr. Williamson's position was. He was asked, was he the State Chairman, and he said "Yes." Then he was asked,

—Tr. Tr. 10,672—

was he the district organizer. Now I think we ought to have from the witness what position he held. I do not think we ought to have counsel putting the words in his mouth.

The Court: I think that is so, too, but it seems quite remote here and relatively unimportant.

Mr. McGohey: Well, your Honor, that is so and I indicated that when I first addressed myself to your Honor—

The Court: What are you laughing about, Mr. Sacher? I do not like that at all. You keep it up all the time.

Mr. Sacher: You have asked me a question and I would like to answer it.

The Court: What is that?

Mr. Sacher: You have asked me a question and I would like to answer it.

The Court: Go ahead and answer it.

Mr. Sacher: Mr. McGohey says this is a matter of no importance and then proceeds to spend a lot of time discussing a matter of no importance.

The Court: Well, I do not think it is so funny It may seem so to you.

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—Tr. Tr. 10,698—

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Q. Did the Party have fractions at that time?

Mr. Sacher: I object to this.

The Court: Overruled.

A. Now, at that time I wasn't acquainted with the Party—

The Court: Mr. Sacher, you cannot laugh these things off.

Mr. Sacher: I am not laughing anything off.

The Court: You must have laughed at something, and it is very offensive to me.

Mr. Sacher: It is so obviously unrelated to the case, I cannot imagine why it is being asked.

The Court: Well, I can imagine, and I imagine there are others who can too, and I think, perhaps, that is the reason you are laughing—

Mr. Sacher: No, that is not the reason at all.

The Court: —laughing it off.

Mr. Sacher: That is not the reason I am laughing.

—Tr. Tr. 10,699—

The Court: You should stop.

Mr. Sacher: And I should say that I haven't been laughing.

The Court: You should have thought of that first.

Mr. McGohey: If the Court please, may I be heard for a moment?

I desire to call the Court's attention to the fact that we are now having a repetition of what we had the other day with Mr. Gladstein.

Mr. Sacher: I object to that—

Mr. McGohey: May I be heard, your Honor, without this constant interruption?

Mr. Sacher: I object to that, Mr. McGohey characterizing my conduct.

The Court: He is just taking this opportunity to make another one of these rumpuses.

Mr. Sacher: I object. I am not doing anything like that, but I object to Mr. McGohey arrogating to himself the function of the Court in criticizing me.

The Court: When a lawyer is speaking to the Court, it is usually good taste, to say the least, for the other lawyers to wait—

Mr. Sacher: Not while bad taste—

The Court: —and not to interrupt him. You have

—Tr. Tr. 10,700—

a way of interrupting people which, I suppose, you will continue to do until the end.

Mr. Sacher: If I am unjustly attacked, I will do it.

The Court: I tell you not to do it.

Mr. Sacher: If I am unjustly attacked, I am obliged to do it, your Honor.

The Court: You always seem to think somebody is attacking you, or something of that kind.

Now, Mr. McGohey, will you go ahead and tell me what you were saying?

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—Tr. Tr. 10,726—

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Mr. Sacher: Well, I would like to have it noted that the question has been changed, your Honor, in the course of these repetitions.

The Court: Well, I am not going to interrupt the cross-examination to examine into such minutiae. The last question will serve.

Mr. McGohey is cross-examining and I will permit the question.

Mr. Sacher: I should just like to point out that it used to be done to me on cross-examination.

The Court: What is that?

Mr. Sacher: It used to be done to me on cross-examination.

The Court: What used to be done to you?

—Tr. Tr. 10,727—

Mr. Sacher: This business of pointing out that a question was not in the precise words of the preceding question.

The Court: I recall nothing of that kind. I take it that is another one of your offensive comments attempting to make it appear that I am partial to the Government—

Mr. Sacher: No, it is a statement of fact.

Kirchmarek—Cross
Colloquy

The Court: Well, kindly refrain from such things unless you have some basis for it.

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—Tr. Tr. 10,765—

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Q. And that at that meeting there was discussed the draft resolution of the National Board? A. That's right,—the National Committee.

Q. Of the National Committee? A. Yes.

Q. Now I understood you—did you say the draft resolution of the National Committee? A. June 2nd, I think it was.

Q. Now this meeting that you attended of the State Committee was on June 17th, was it not? A. Yes.

Mr. Sacher: The witness—excuse me—is referring to a resolution of June 2nd, and I think rather than play around—

Mr. McGohey: Now if the Court please, here we go.

Mr. Sacher: Well, he just said June 2nd, your Honor, and I think—

The Court: Mr. Sacher, is there no way that I can prevent you from interrupting the cross-examination as usual? You have been repeatedly told by me not to do that.

Mr. Sacher: I am not interrupting, your Honor; I am—

The Court: You are interrupting. You will please not do it again. I think you are taking advantage

—Tr. Tr. 10,766—

of my statement that I would not take any action against the lawyers here during the trial. I hope you will bear that in mind.

Mr. Sacher: Your Honor, it is very little comfort to be threatened almost daily with what will happen to one after the trial—

The Court: Yes.

Mr. Sacher: —so I am not encouraged by anything.

The Court: Yes. It is much easier for a lawyer to pay respect to the Court and to follow obediently the Court's directions rather than flouting them daily and persistently as you do.

Mr. Sacher: I have not flouted either daily or persistently and have never had any intention and do not now have the intention of doing any such thing.

The Court: I say you do and you will please stop.

Mr. Isserman: I must object to your Honor's remark made in the presence of the jury which cannot but make the defense of our clients more difficult and to prejudice that defense.

The Court: It seems to me the thing to do then is to behave yourselves.

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Kirchmarek—Cross
Colloquy

—Tr. Tr. 10,784—

New York, July 28, 1949

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Q. Very well. Now in 1947 the Party members in Ohio who were, as a rule, using first names or at least in some instances were using first names, were they not?

—Tr. Tr. 10,785—

Mr. Sacher: I object to the question, your Honor, because it has—

The Court: Overruled.

Mr. Sacher: —two opposites.

The Court: I am not going to have it started again, Mr. Sacher, like yesterday.

Mr. Sacher: But I object—

The Court: I overrule your objection. I don't want to hear any argument.

Mr. Sacher: But it is contradictory. It speaks of a rule and it speaks of "sometimes." Now which is it? Is it sometimes or is it a general rule?

Mr. McGohey: I will withdraw the question and reframe it, your Honor, so that we can save the argument and get on.

The Court: I wish to state on the record that I am physically and mentally incapable of going through very much more of this wrangling and argument and I shall have to do something about it if it is continued and counsel refuse to obey my admonition. It is more than any human being can stand.

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—Tr. Tr. 10,788—

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Q. That was Helen Krchmarek, wasn't it?

Mr. Sacher: I object unless the witness knows.

The Court: The question seeks to elicit his knowledge.

A. I don't know whether that was Helen Krchmarek.

Mr. McGohey: Well, there it is. It is obvious with that kind of objection in that form—

Mr. Sacher: I move to strike out that remark and ask that your Honor instruct the jury to disregard it.

Mr. McGohey: If the Court please, may I be heard?

The Court: Yes, you may.

Mr. McGohey: Your Honor, I have objected before that Mr. Gladstein by the method of his interruption, the manner of his interruption, and the

—Tr. Tr. 10,789—

timing of his interruption, so conducted the interruptions as to coach the witness, and I now say that twice stating an objection in this form, which your Honor has said may not be done—your Honor has instructed all of us that we may only say we have an objection, and if the Court wishes to ascertain the ground of the objection the Court will ask for it. Now three times, or at least twice Mr. Sacher has gotten up and I say he instructed the witness by saying repeatedly "If the witness knows." That was the purpose of the question, to find out if he did know. I say with that kind of an objection

handed to him twice, it is now obvious that he got the signal.

Mr. Sacher: May I be heard, your Honor?

The Court: Yes.

—Tr. Tr. 10,790—

Mr. Sacher: May I now be heard, your Honor?

The Court: Yes.

Mr. Sacher: I say to your Honor that what Mr. McGohey had done is the most reprehensible thing that could be done in the course of a trial: he has accused me of unprofessional and improper conduct. To say that I resent it is to understate the situation.

I respectfully submit to the Court that in the 25 years that I have practiced in all the courts of this State, I have never descended to the kind of practice that Mr. McGohey charges me with, and I insist that he owes me an apology.

And on the basis of what he has said, I move for a mistrial on the ground that that kind of statement, made by the United States Attorney in the course of a trial, denies these defendants an opportunity for a fair trial.

The Court: The motion is denied.

I wish you would explain to me, Mr. Sacher, why, in view of my repeated admonition that lawyers for both sides, in objecting, should merely say "I object," and not say anything more without my leave, I wish you would you explain how it was that you happened to make the comment that you did?

Mr. Sacher: I shall be glad to do that, your Honor.

—Tr. Tr. 10,791—

The Court: Do it now.

Kirchmarek—Cross
Colloquy

Mr. Sacher: I will. In the last two or three weeks that I have sat in this court, I have observed Mr. McGohey time and time and time again, stating objections to questions without obtaining leave of the Court. As a matter of fact, I rose last week—

The Court: So you did it deliberately?

Mr. Sacher: I didn't do it deliberately but what has happened, your Honor, is that there has developed such a laxity in the application of the rule to the United States Attorney that sometimes we forget, as we rise to state our objections, that we are limited to those words. That is the point.

The Court: Did you forget?

Mr. Sacher: Of course I did, your Honor.

The Court: Then please don't forget again.

Mr. Sacher: I will do my best not to.

Mr. Isserman: If the Court please, may I be heard for a moment?

The Court: I suppose my mentioning my state of fatigue has merely served as a spur to additional argument this morning.

Mr. Isserman: If the Court please, I respectfully object to your Honor's remark and still ask if I may be heard on this subject.

—Tr. Tr. 10,792—

The Court: You go ahead.

Mr. Isserman: I want to say a word on behalf of Mr. Gladstein, who isn't in this courtroom this morning to answer. I first remake the motion—

The Court: I must take a recess now and lie down for a minute or two.

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—Tr. Tr. 10,981—

New York, July 29, 1949

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The Court: I shall not pursue my usual policy of dismissing the jury because I take it this discussion is not to be too lengthy, Mr. Dennis?

Defendant Dennis: At this point, your Honor, I rise to move for a mistrial in view of the Court's announcement and previous rulings which, in effect, are designed to limit the defense to a skeleton rebuttal of the false testimony introduced by prosecution witnesses, and to refutations of the Nazi-like interpretations of the principles of Marxism-Leninism.

In view of the biased and prejudicial rulings, restricting the—

The Court: You mean bias of mine?

Defendant Dennis: Biased, as I understood them, your Honor.

—Tr. Tr. 10,982—

The Court: I say, but you mean bias by me? Do you say that?

Defendant Dennis: On the part of the Court.

The Court: That is what I thought. I thought it might be well to have it clear what you claimed.

Defendant Dennis: In view of the numerous prejudicial rulings on the part of the Court, restricting the defense from presenting vital written and oral testimony regarding many fundamental aspects of the advocacy and teaching of our Party—

The Court: To wit—

Defendant Dennis: —such as has been done—

The Court: —some vital aspect of your teaching now that I ruled out?

Defendant Dennis: One aspect, and a very crucial one, was the ruling of the Court on the article and document prepared by Mr. Foster, which is an official part of our teaching. Another was—

The Court: Why, he prepared that after the case was half over.

Defendant Dennis: Another was a—another was the joint article which Mr. Green and I prepared, which was ruled out and subsequently, due to the—

The Court: So one of the errors is that I admitted something that—

—Tr. Tr. 10,983—

Defendant Dennis: I would like to continue with my motion.

The Court: Well, you see, Mr. Dennis, curious as it may seem to you, I have a right to understand because you are addressing the motion to me and not to the public at large, and so, if I choose to question you, that is my undoubted privilege.

Now, go ahead.

Defendant Dennis: Apropos this point, the ruling of the Court in connection with the testimony of Mr. Phillips, where he was prevented from stating to the Court and the jury the principles of Marxism-Leninism, which were what he taught in a Party school in the State of Washington, and which was a part of the course which he gave in the

University of Washington. Other instances could be cited.

And I say, further, in view of the measures which the Court has taken against defense witnesses, in view of all these things, it is clear that we defendants are being deprived of due process and our constitutional rights, and that it is utterly impossible to obtain a fair trial.

In view of this, your Honor, I move for a mistrial.

The Court: The motion is denied.

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—Tr. Tr. 11,028—

New York, August 1, 1949

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The Court: Overruled. What was the answer, Mr. Reporter, please?

(Answer read as follows:)

"Plus others."

Q. It was formed by people who had been in the Young Communist League, wasn't it?

Mr. Isserman: I object to that question.

The Court: Overruled.

A. As I recall it, it was formed by delegates who had dissolved the YCL, plus other youth who were invited to participate.

Q. Now, did you go to any AYD schools?

Mr. Isserman: I object to that question.

The Court: Overruled.

A. No, I didn't.

Q. Now, up to 1945, in December, had you attended any other schools of the Young Communist League?

Mr. Isserman: I object to that question.

Q. (Continuing) Apart from the one that was held at your home?

The Court: Overruled.

A. No, I didn't.

Q. Since 1945 have you attended any other schools of the Communist Party? A. No, I haven't.

—Tr. Tr. 11,029—

Q. Now, since 1945 have you taught at any other schools of the Communist Party other than the two that you told us about this morning?

Mr. Isserman: I object to that question.

The Court: Just a moment.

When you refer, Mr. Gordon, to the teaching by Mrs. Hall in Communist Party schools, I take it you refer to those two one-day sessions, one in September 1946, and the other in the beginning of July 1948, concerning which the witness testified this morning?

Mr. Gordon: Yes, your Honor.

The Court: Very well, I will overrule the objection.

Mr. Isserman: If the Court please, there is no indication that the question is limited to the indictment period, and it does not refer to any school.

The Court: I will allow it.

Q. Do you have the question in mind, Mrs. Hall?

The Witness: Will you repeat it?

(Question read.)

A. Yes.

Q. When?

Mr. Isserman: I object.

The Court: Overruled.

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—Tr. Tr. 11,031—

Mr. Isserman: I object to that as argumentative. It is not based on the facts in evidence as testified by this witness.

The Court: Mr. Isserman, do you remember my admonition, that when counsel objects, counsel is merely to state "I object"? You have violated it several times this morning. Did you forget?

Mr. Isserman: I am reminded of it now. It is a habit that goes back over 25 years. It is hard to give up that habit, which your Honor has undoubtedly engaged in yourself.

The Court: Every time you do that your action is contemptuous and direct, I think, wilful and deliberate disobedience of my command.